

Montana Water Court
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Bozeman, MT 59771-1389
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watercourt@mt.gov

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
GALLATIN RIVER BASIN (41H)
PRELIMINARY DECREE

* * * * *

CLAIMANTS: Eugene Graf Jr; Genevieve S. Graf; ~~Red Cloud~~
LLC

CASE 41H-0330-R-2023

41H 117301-00

41H 117306-00

41H 117308-00

41H 117309-00

41H 117310-00

41H 138764-02

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Claims 41H 117301-00, 41H 117306-00, 41H117308-00, 41H117309-00, 41H 117310-00 and 41H 138764-02 appeared in the Preliminary Decree for the Gallatin River (Basin 41H).

2. On August 29, 2013 Alvin Goldenstein, Shelia M. Ruffato Living Trust, and Shelley and Gordon Vance filed documents with DNRC to split claim 41H 117308-00, 41H 117309-00 and others. The documents were not delivered to the Water Court until September 20, 2018 and the 641 Forms have not been uploaded into the scanned documents or claim file.

3. In an April 12, 2023 Order, the Court set a June 12, 2023 deadline for the Claimants to submit deeds and proposed abstracts showing the proportionate, pre-1973 split. If nothing was filed by the deadline the split request would not be processed and it would be dismissed.

4. On June 7, 2023 Claimant Red Cloud withdrew its interest in claim 41H 117309-00 stating Red Cloud was incorrectly added as a co-owner and has no interest in this water right.

5. Nothing was filed regarding the request to split claim 41H 117308-00 or other claims. Therefore, the request to split claims should be dismissed.

6. Claim 41H 117306-00 received DNRC notice issue remarks stating:

OWNERSHIP OF THIS RIGHT APPEARS QUESTIONABLE. THE PLACE OF USE IS HIGHLY SUBDIVIDED PER GALLATIN COUNTY CLERK AND RECORDERS AND CADASTRAL RECORDS.

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON NASH SPRING CREEK WITH A PRIORITY DATE PREDATING CASE NO. 1333, GALLATIN COUNTY.

The issue remarks have served their purpose of providing notice and should be removed from the claim. If you are receiving this order and feel the ownership is incorrect, it is the claimant's responsibility to provide the proper deeds and ownership information to the DNRC.

7. Claims 41H 117308-00 and 41H 117309-00 received DNRC notice issue remark stating:

THIS CLAIM WAS INCLUDED IN A WATER COURT CASE INITIATED PRIOR TO THE ISSUANCE OF THE BASIN 41H PRELIMINARY DECREE. THE CASE WAS NOT CLOSED PRIOR TO THE ISSUANCE OF THE DECREE. THEREFORE, THE ABSTRACT MAY NOT REFLECT THE CURRENT ELEMENTS OF THIS CLAIM AS ADJUDICATED BY THE COURT.

The issue remark has served its purpose of providing notice and should be removed from the claims.

8. Claim 41H 117310-00 received a DNRC notice issue remark stating:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

The court disagrees with this issue remark upon inspection of the claim file, and the issue remark should be removed from the claim.

9. Claims 41H 117301-00, 41H 117306-00, 41H 117308-00, 41H 117309-00 and 41H 138764-02 received a DNRC notice issue remark stating:

DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

The issue remark has served its purpose of providing notice and should be removed from the claims.

10. Claims 41H 117309-00 and 41H 138764-02 received DNRC notice issue remark stating:

THE TIMELY FILED OBJECTION OF GERALD AND ALVIN GOLDENSTEIN WAS AMENDED BY AGREEMENT OF THE PARTIES TO INCLUDE OWNERSHIP, FLOW RATE, SOURCE, PERIOD OF USE, POINT OF DIVERSION, MEANS OF DIVERSION AND PLACE OF USE. BECAUSE THESE ELEMENTS WERE NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THESE CHANGES MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

This remark was added to the claims in a March 13, 2002 Master's Report. The remark was added to alert potential objectors of the changes to the preliminary decree. The claims received no objections. The issue remark should be removed.

CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. No evidence was presented to overcome the prima facie status of the claim.

2. When a Claimant fails to comply with an order issued by the Montana Water Court, the Court may issue just sanctions, such as resolution of an issue remark with information obtained by the Court. Rule 22, W.R.Adj.R.

3. All issue remarks to claims that are not resolved through the filing of an objection must be resolved pursuant to § 85-2-248, MCA. § 85-2-248(2), MCA. However, the requirement to resolve issue remarks does not eliminate the prima facie status granted to water rights, nor does it change the burden of proof required to modify or invalidate a claim. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015. The issue remark appearing on the claims does not overcome the prima facie status of the claim and should be removed.

4. Notice-type issue remarks provide water users notice of potential issues with a claim but may be remove once notice has been provided.

RECOMMENDATIONS

The split requests should be dismissed and the issue remarks should be removed as described in the Findings of Fact.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm that the changes have been made in the state's centralized database.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Eugene Graf Jr
Genevieve S. Graf
PO Box 906
Bozeman, MT 59715

Service Via Electronic Mail:

Last Order:

Abigail R. Brown
Attorney at Law
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7 West 6th Avenue, Ste 40
Helena, MT 59601
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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 117301-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: GENEVIEVE S GRAF
PO BOX 906
BOZEMAN, MT 59715

EUGENE GRAF JR
PO BOX 906
BOZEMAN, MT 59715

Priority Date: DECEMBER 31, 1866
Type of Historical Right: DECREED
Purpose (use): IRRIGATION
Irrigation Type: FLOOD
Flow Rate: 1.25 CFS
***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
Climatic Area: 4 - MODERATELY LOW
***Maximum Acres:** 90.00
Source Name: NASH SPRING CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENENW	30	2S	6E	GALLATIN

Period of Diversion: MAY 1 TO OCTOBER 1
Diversion Means: HEADGATE
Ditch Name: A. BIERING DITCH
Period of Use: MAY 1 TO OCTOBER 1

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	90.00		SW	19	2S	6E	GALLATIN
Total:	90.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

117301-00	117306-00	117308-00	117309-00	117310-00	138764-02
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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 117306-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: GENEVIEVE S GRAF
PO BOX 906
BOZEMAN, MT 59715

EUGENE GRAF JR
PO BOX 906
BOZEMAN, MT 59715

Priority Date: DECEMBER 31, 1885
Type of Historical Right: FILED
Purpose (use): IRRIGATION
Irrigation Type: SPRINKLER/FLOOD
***Flow Rate:** 1.25 CFS
***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
Climatic Area: 4 - MODERATELY LOW
***Maximum Acres:** 90.00
Source Name: NASH SPRING CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENENW	30	2S	6E	GALLATIN

Period of Diversion: MAY 1 TO OCTOBER 1
Diversion Means: HEADGATE
Ditch Name: A. BIERING DITCH
Period of Use: MAY 1 TO OCTOBER 1

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	90.00		SW	19	2S	6E	GALLATIN
Total:	90.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

117301-00	117306-00	117308-00	117309-00	117310-00	138764-02
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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 117308-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: GENEVIEVE S GRAF
PO BOX 906
BOZEMAN, MT 59715

EUGENE GRAF JR
PO BOX 906
BOZEMAN, MT 59715

Priority Date: MAY 1, 1911
Type of Historical Right: FILED
Purpose (use): IRRIGATION
Irrigation Type: SPRINKLER/FLOOD
***Flow Rate:** 2.50 CFS

THE WATER RIGHTS FOLLOWING THIS STATEMENT EACH HAVE AN UNDIVIDED ONE-THIRD INTEREST IN A SINGLE WATER RIGHT FOR 2.50 CFS. 41H 126930-00, 41H 117308-00, 41H 117308-01. THESE WATER RIGHTS ARE USED ON A SHARED BASIS AS MUTUALLY AGREED IN A SWORN STIPULATION FILED 11/3/1999 IN CASE FILE 41H 272.

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
Climatic Area: 4 - MODERATELY LOW
***Maximum Acres:** 90.00
Source Name: NASH SPRING CREEK
Source Type: SURFACE WATER
Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENENW	30	2S	6E	GALLATIN
Period of Diversion:	MAY 1 TO OCTOBER 1					
Diversion Means:	HEADGATE					
Ditch Name:	A. BIERING DITCH					
Period of Use:	MAY 1 TO OCTOBER 1					
*Place of Use:						

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	90.00		SW	19	2S	6E	GALLATIN
Total:	90.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

117301-00

117306-00

117308-00

117309-00

117310-00

138764-02

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 117309-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: GENEVIEVE S GRAF
PO BOX 906
BOZEMAN, MT 59715

EUGENE GRAF JR
PO BOX 906
BOZEMAN, MT 59715

RED CLOUD LLC
101 S MAIN AVE STE 301
SIOUX FALLS, SD 57104 6451

Priority Date: MAY 10, 1916
Type of Historical Right: FILED
Purpose (use): IRRIGATION
Irrigation Type: SPRINKLER/FLOOD
***Flow Rate:** 2.50 CFS

***Volume:** THE WATER RIGHTS FOLLOWING THIS STATEMENT EACH HAVE AN UNDIVIDED ONE-THIRD INTEREST IN A SINGLE WATER RIGHT FOR 2.50 CFS. 41H 126931-00, 41H 117309-00, 41H 117309-01. THESE WATER RIGHTS ARE USED ON A SHARED BASIS AS MUTUALLY AGREED IN A STIPULATION FILED 11/03/1999 IN CASE FILE 41H 272.

Climatic Area: 4 - MODERATELY LOW
***Maximum Acres:** 90.00
Source Name: NASH SPRING CREEK
Source Type: SURFACE WATER
***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENENW	30	2S	6E	GALLATIN
Period of Diversion: MAY 1 TO OCTOBER 1						
Diversion Means: HEADGATE						
Ditch Name: A. BIERING DITCH						
Period of Use: MAY 1 TO OCTOBER 1						

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	90.00		SW	19	2S	6E	GALLATIN
Total:	90.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

117301-00	117306-00	117308-00	117309-00	117310-00	138764-02
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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 117310-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: GENEVIEVE S GRAF
PO BOX 906
BOZEMAN, MT 59715

EUGENE GRAF JR
PO BOX 906
BOZEMAN, MT 59715

Priority Date: APRIL 27, 1910
Type of Historical Right: FILED
Purpose (use): IRRIGATION
Irrigation Type: SPRINKLER/FLOOD
Flow Rate: 2.50 CFS
***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
Climatic Area: 4 - MODERATELY LOW
***Maximum Acres:** 90.00
Source Name: BIRD SPRING CREEK
Source Type: SURFACE WATER
Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWSW	19	2S	6E	GALLATIN
Period of Diversion:	MAY 1 TO OCTOBER 1					
Diversion Means:	HEADGATE					
Period of Use:	MAY 1 TO OCTOBER 1					

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	90.00		SW	19	2S	6E	GALLATIN
Total:	90.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

117301-00	117306-00	117308-00	117309-00	117310-00	138764-02
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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 138764-02 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

***Owners:** GENEVIEVE S GRAF
PO BOX 906
BOZEMAN, MT 59715

EUGENE GRAF JR
PO BOX 906
BOZEMAN, MT 59715

***Priority Date:** APRIL 15, 1917
Type of Historical Right: USE
Purpose (use): IRRIGATION
Irrigation Type: SPRINKLER/FLOOD
***Flow Rate:** 5.00 CFS

THE WATER RIGHTS FOLLOWING THIS STATEMENT EACH HAVE AN UNDIVIDED 1/3 INTEREST IN A SINGLE WATER RIGHT FOR 5.00 CFS. 41H 138764-00, 41H 138764-01, 41H 138764-02. THESE WATER RIGHTS ARE USED ON A SHARED BASIS AS MUTUALLY AGREED IN A SWORN STIPULATION FILED 11/03/99 IN CASE FILE 41H-272.

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
Climatic Area: 4 - MODERATELY LOW
***Maximum Acres:** 90.00
***Source Name:** NASH SPRING CREEK
Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENENW	30	2S	6E	GALLATIN

***Period of Diversion:** APRIL 1 TO NOVEMBER 1
Diversion Means: HEADGATE
Ditch Name: A. BIERING DITCH
***Period of Use:** APRIL 1 TO NOVEMBER 1
***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	90.00		SW	19	2S	6E	GALLATIN
Total:	90.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

117301-00

117306-00

117308-00

117309-00

117310-00

138764-02